

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN TIBETAN HEALTH
INSTITUTE, INC., a California corporation,

Plaintiff,

v.

KAM NG, an individual, C&L
INTERNATIONAL TRADING INC., a New
York corporation, KANG LI TRADING INC.,
a New York corporation, and K&C
INTERNATIONAL TRADING INC., a New
York corporation,

Defendants.

Civ: 13 CV 2763 (HB)(RLE)

**DECLARATION OF
PHILIP ABRAMOWITZ**

PHILIP ABRAMOWITZ, an attorney duly admitted to practice before the Southern District of New York, affirms the following to be true under the penalty of perjury:

1. I am *of counsel* to KLOSS, STENGER & LOTEMPPIO, attorneys for Plaintiff AMERICAN TIBETAN HEALTH INSTITUTE, INC. I am fully familiar with the facts and circumstances of this case as set forth in my file.

2. This declaration is submitted in support of the Plaintiff's Order to Show Cause For a Preliminary Injunction and Temporary Restraining Order and Seizure Order.

3. This declaration is submitted for the limited purpose of setting out exhibits in support of Plaintiff's application. The legal argument is set out in the accompanying Plaintiff's Memorandum of Law.

4. The following exhibits are attached hereto:

a. Exhibit "A" – Plaintiff's Complaint with the following exhibits

- i. Exhibit "1" – Copyright Certificate for Plaintiff's tea packaging and tea packaging;
- ii. Exhibit "2" – Plaintiff's tea packaging;
- iii. Exhibit "3" – Declaration of Shirley Lee, Plaintiff's President, dated 4/18/2013;
 - 1. Exhibit "A" Letter dated March 15, 2013 sent to Plaintiff's retailers by Defendants;
 - 2. Exhibit "B" – Copy of Sing Tao Daily newspaper in which Defendants published the March 15, 2013 letter;
 - 3. Exhibit "C" – Letter of complaint from Plaintiff's customer to Plaintiff regarding the Defendants' claims dated April 4, 2013;
 - 4. Exhibit "D" - Letter of complaint from Plaintiff's customer to Plaintiff regarding the Defendants' claims dated April 10, 2013;
 - 5. Exhibit "E" – images of Defendants' counterfeit packaging;
- iv. Exhibit "4" – Declaration of Doctor Qioung Zhang Shen, a retailer of Plaintiff's genuine products, dated April 8, 2013;
- v. Exhibit "5" – Declaration of Anna Li, a retailer of Plaintiff's genuine products, dated April 5, 2013;
 - a. Exhibit "A" – Letter Ms. Li received from Defendants making claims to Plaintiff's trademarks, dated March 15, 2013;

- vi. Exhibit "6" – Defendant's infringing tea packaging;
- vii. Exhibit "7" - A printout from the website www.us-tt.net, which Plaintiff is informed and believes is owned and operated by Defendants, showing Defendants' goods under the marks available for sale;
- viii. Exhibit "8" – Declaration of Brian I Marcus, Esq. trademark counsel, dated April 10, 2013;
 - 1. Exhibit "A" – Printout from USPTO regarding Plaintiff's registration for the mark "Tibetan Baicao Tea";
 - 2. Exhibit "B" – specimen submitted to the USPTO in connection with Plaintiff's trademark registration;
- ix. Exhibit "9" – Daniel Horace Ho Wai Liu, certified paralegal with Intellectual Property Group Law Group, LLP who was retained to investigate defendant's counterfeit and infringing goods in New York City, dated April 15, 2013;
 - 1. Exhibit "A" – copies of Sing Tao Daily newspaper, dated March 29, 2013 and March 31, 2013 with defendants' open letter;
 - 2. Exhibit "B" – Receipt for purchase of Defendants' infringing products;
 - 3. Exhibit "C" – photographs of Defendants' infringing products;
 - 4. Exhibit "D" – Receipt for purchase of products from K&C

retail location (Exhibits "E" and "F" below);

5. Exhibit "E" – Photo of plaintiff's goods purchased from Defendant's store;

6. Exhibit "F" – Photo of defendants' counterfeit goods from Defendant's store;

x. Exhibit "10" – side by side comparison of Plaintiff's and product and two counterfeit products of Defendants purchased on two dates;

b. Exhibit "B" – Declaration of Otto O. Lee, Esq., counsel to Plaintiff dated April 18, 2013;

i. Exhibit "A" – Defendants' March 15, 2013 letter to Plaintiff's customers;

ii. Exhibit "B" – Sing Tao Daily Newspaper from March 24, 2013;

iii. Exhibit "C" – Copyright Registration Certificate dated April 10, 2013, for Plaintiff's tea packaging;

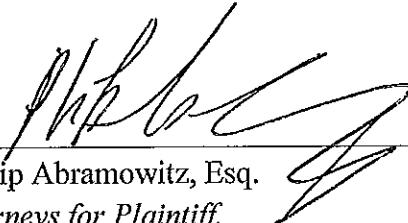
iv. Exhibit "D" – copy of the registered work;

v. Exhibit "E" – a copy of the assignment of the copyrights in the tea packaging to the Plaintiff from the Shirely Lee, the wife of the deceased author.

WHEREFORE, based on the exhibits annexed hereto, the accompanying Memorandum of Law, and the annexed declarations, Plaintiff respectfully requests that this Court grant Plaintiff's application in its entirety along with such other and further relief as this Court deems just, proper, and equitable.

Dated: Buffalo, New York
April 30, 2013

KLOSS, STENGER & LOTEMPIO

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